IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10254 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JELABHAI KANTIBHAI RATHOD

Versus

COMMISSIONER OF POLICE

Appearance:

MS BANNA DATTA FOR MS KRISHNA U MISHRA for Petitioner

MR AJ DESAI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/02/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for Ms.K.U.Mishra on behalf of the petitioner and Mr.A.J. Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 17-4-99 passed by respondent No. 1 - The Commissioner of Police, Surat City against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that a prohibition case vide C.R. No : 250 / 99 was registered against the petitioner at North Zone Police Station and country made liquor was seized from the possession of the petitioner / detenu. The petitioner was arrested and released on bail on the same day i.e. on 16-2-99 and thereafter, chargesheet was filed on 4-3-99 and the matter is pending for trial in the Court.

#. The grounds further indicate that two witnesses on assurance of their anonymity have given statement on 12-4-99 and 14-4-99 and have related to alleged incidents showing the bootlegging activities of the petitioner dated 17-3-1999 and 28-3-1999 respectively. That on the basis of the said material, the respondent No. 1 - The Commissioner of Police, Surat City the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order suffers infirmity of taking a delayed action without any reasonable explanation. It is submitted that the petitioner was arrested in connection with the said prohibition offence on 16-2-99 and was released on bail on the same day. Thereafter, the ground of detention does not disclose any activities except alleged information recorded as supplied by anonymous witnesses which also relate to incidents alleged to have occurred on 17-3-1999 and 28-3-1999. That the grounds are devoid of any information that thereafter till 12-4-99 and

14-4-99 when the sponsoring authority had recorded a statement whether the petitioner was indulging into said bootlegging activities or not and the facts stated therein do not show a live link of the said anti social activities upto 17-4-1999 when the impugned order is passed.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has elaborated the proposition of law that in the absence of any reasonable explanation, regarding delay in taking action from the date of receipt of information regarding alleged anti social activities of the detenu, the detention order cannot be sustained. That this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonable explanation for delayed action, the detention order cannot be sustained.

#. In the instant case, as discussed hereinabove, the grounds of detention do not disclose any live link of alleged anti social activities of the petitioner from the date of registered offence till the impugned action is taken. That despite service of rule, non of the respondents has filed any affidavit so as to explain or controvert the allegations made in the petition and as such on facts, I am constrained to hold that on account of snapping of live link between the alleged incident of anti social activities and the impugned action, impugned order cannot be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 17-4-99 passed by respondent No. 1 - The Commissioner of Police, Surat City against the petitioner is hereby quashed and set aside. The petitioner - Jalabhai Kantibhai Rathod is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 15-2-2000 [A.K.Trivedi, J.]
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